

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In The Matter Of

Establishment of a Class A
 Television Service

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MM Docket No. 00-10
 MM Docket No. 99-292
 RM-9260

To: The Commission

COMMENTS

Entravision Holdings, LLC ("Entravision"), by and through its counsel and pursuant to Section 1.415 of the Commission's Rules, hereby files its Comments in the above-captioned proceeding concerning the establishment of Class A television licenses for qualifying low-power television ("LPTV") stations. In support thereof, Entravision states as follows:

PRELIMINARY STATEMENT

Entravision is the licensee of both full-service and low-power television stations. Its television stations are affiliated with the Univision Network, the principal Spanish-language television network. Entravision disseminates, through its full-service and LPTV stations, Spanish-language programming to and serves the needs of Hispanic individuals who rely on Entravision's stations not only for entertainment, but also for news and public affairs programming of importance. Entravision's LPTV stations retransmit Univision Network programming and, in a number of markets, provide original news and public affairs programming as well as public service announcements and other forms of assistance to the Hispanic community.

Entravision supports the establishment of Class A television licenses. According primary status to qualifying LPTV stations will remove much of the uncertainty presently confronting LPTV stations, including certain of those licensed to it, thus improving their economic health and ability to serve their broadcast audiences. As the licensee of both full-service and LPTV

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stations, Entravision also recognizes and requests the Commission to take note that institution of the Class A service should not impede existing NTSC broadcasting and the transition to DTV operations. Therefore, Entravision urges the Commission to weigh carefully the rules it intends to adopt so that full-service broadcasters can continue to provide the principal service they offer based on their superior coverage of communities and markets.

As an LPTV operator, Entravision knows that the operation of LPTV stations benefits the public interest. LPTV stations provide localized sources of news and information often unavailable from full-service broadcasters. In fact, LPTV stations are often the only source of such programming. This programming is often locally produced or in a foreign language, and as a result, is more attuned to and responsive to the station's community. For example, in the San Diego, California market, with its substantial Hispanic population, it is Entravision's LPTV station, KBNT-LP, that is the principal source of Spanish-language programming in the market. Additionally, LPTV is responsible for much of the diversity of broadcast station ownership, one of the Commission's stated goals, as a number of LPTV stations are operated by community groups, religious organizations, small businesses, minorities and women.

The secondary regulatory status imposed on LPTV stations has created uncertainty in the operation of LPTV stations, hindering their ability to serve their communities. Relative to full-service stations, LPTV stations are accorded secondary status under the Commission's rules. As a result, LPTV stations are subject to displacement by full-service stations upon occasions of interference. Additionally, during the transition to digital television, which has been accompanied by the removal of Channels 60-69 for broadcast service and the allotment of a significant number of available channels as paired DTV channels for the transition period, displacement is a real problem. For example, Entravision faces the loss of its LPTV stations in major markets owing to the absence of available channels to be displaced to. Thus, the potential for displacement, a virtual death-sentence for a LPTV station, is imposed upon every LPTV station as a result of their secondary regulatory status. While this proceeding does not offer any

solutions to the problem of the unavailability of channels, the protection of existing stations, so long as full-service stations are not impeded, is a worthy goal.

The potential for displacement imposes a great deal of uncertainty upon LPTV stations. It is difficult to obtain and accumulate capital to upgrade equipment and secure quality programming when an LPTV station's future is not assured. As a result, LPTV stations are hampered in their attempts to serve their communities with high-quality broadcasts and programming. And, as the viewing audience is negatively affected by the presentation of less than the highest-quality broadcasting and programming, a downturn in a station's viewing audience, and hence the station's advertising revenue, is created. The end result is that, as a result of the uncertainty created by the secondary regulatory status of LPTV stations, their ability to provide quality broadcasting to their communities is threatened.

The establishment of Class A television licenses for qualifying LPTV stations required by the Community Broadcasters Protection Act of 1999 will solidify the status of qualifying LPTV stations as the Class A licenses will be subject, in a variety of respects, to the same license terms and renewal standards as full-power television stations. Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008(f) of Pub. L. No. 106-113, 113 Stat. 1501 (1999), *codified at* 47 U.S.C. § 336(f). Under the CBPA, the service area of qualifying Class A stations will be protected upon their application for Class A status, a qualifying station's signal contours will be protected against interference from certain stations authorized after the November 29, 1999 enactment date of the CBPA, and some measure of protection from DTV stations will be afforded. Order and Notice of Proposed Rulemaking, FCC 00-16, January 13, 2000 ("NPRM"), ¶¶ 10, 11, 13. Thus, a degree of "primary" status will be provided to qualifying LPTV stations, eliminating a great deal of the uncertainty facing these stations. As a result, these stations will secure the firm regulatory base from which to serve their communities and provide quality programming well into the future.

SPECIFIC PROPOSALS

In the remainder of its Comments, Entravision will address specific elements of the NPRM:

1. Eligibility Criteria

Section (f)(2)(B) of the CBPA permitted the Commission to establish alternative eligibility criteria for Class A designation. Under the statutory criteria, an LPTV station must have broadcast for at least 18 hours per day, had an average of 3 hours per week of market produced programming and complied with LPTV rules. In the NPRM, the Commission noted that it would consider deviations from the standards as well as special criteria for such stations as those that broadcast in a foreign language or have converted from translator status. Entravision supports these goals.

While certain of Entravision's stations meet the standards, others do not. The only area where they do not is in regard to the 3 hours of locally produced programming. Meeting the 3-hour test is a difficult one for foreign language stations such as Entravision's. These stations provide programming that comes from network or program suppliers. Origination of programming is a difficult and expensive process. The cost of undertaking such efforts has to be considered in that LPTV stations are generally limited to over-the-air transmission, as, except in limited situations, they are not entitled to must-carry status on cable television.

Entravision submits that the Commission should expand the eligibility criteria to permit LPTV operators to qualify for Class A designation by showing that they program in a foreign language, provide public service through PSAs, occasional local programming, engage in community service activities, or otherwise serve to make specialized programming available to their communities. These should reflect that there are a number of ways to evidence that an LPTV station is serving the public.

Consistent with this, Entravision requests that if the Commission adopts alternative eligibility criteria that it also open a further eligibility filing window. As a matter of due process, the rules regarding a service or program are usually issued before applications are solicited so

that parties know whether they are eligible. Entravision recognizes that the short statutory timetable did not allow for this in this instance. However, it makes no sense to set up new criteria and then exclude parties who were not apprised in advance of the criteria.

2. Acceptance of Further Applications

Paragraph 9 of the NPRM, requests comment on whether the Commission should accept Class A applications beyond the 60 days outlined in the CBPA. NPRM, ¶ 9. Entravision submits that the Commission should continue, in limited instances, to accept Class A applications beyond the window outlined in the CBPA. This should be made available for LPTV stations that are affected by displacements or changes in the rules that involve all LPTV stations. The statute itself gives the Commission the discretion to confer Class A status on a qualifying station where the public interest, convenience, or necessity is served. CBPA, 47 U.S.C. § 336(f)(2)(B). As a result, Entravision submits that the Commission should continue to accept Class A applications where the unique circumstances described herein apply.

3. Protection of DTV Stations

Entravision, as a full service licensee, recognizes that Class A stations must protect full service stations as they transition to DTV operations. This protection must extend not only to replication of the NTSC service area, but to any proposed maximized coverage as well. While LPTV operations are of significance, they should not overshadow the ability of broadcasters to provide the optimal DTV coverage possible.

In regard to maximization, the Commission indicates that the criteria to secure protection is the filing of the December 31, 1999 notice of intent and the submission of a “bona fide” application by May 1, 2000. While Entravision has filed all of its notices of eligibility on a timely basis, Entravision is aware of instances where the Commission granted waivers of the December 31, 1999 date and may well grant future waivers of the May 1, 2000 date. Entravision submits that parties which receive such waivers should also be entitled to the statutory protections from Class A stations.

4. The Status of LPTV Stations With Pending Modification Applications

The NPRM does not address the question of whether an LPTV station that is the process of seeking Commission authority to relocate to another channel, as a result of displacement, is entitled to Class A protection on its relocated channel. Likewise, this issue is not addressed in connection with further displacements that may arise as a result of DTV “technical problems” and the movement of television stations into the Channel 2-51 core spectrum.

Entravision urges the Commission to clarify the impact of a pending or future modification application. For example, if an LPTV station is presently operating in the Channel 60-69 band and is awaiting Commission consent to relocate to a channel at Channel 59 or below, it should be entitled to Class A status on the relocated channel subject only to compliance with required protections of stations. Entravision submits that the entitlement should extend to the channel where the displacement is to occur so that the party will have a Class A license for the modified operation with all of the protections attendant thereto.

5. Protection of Full Service NTSC Stations

In connection with the protection of NTSC stations by Class A stations, the Commission requests comments on what NTSC stations should be protected. Entravision fully agrees that the phrase “transmitting in analog format” should be interpreted, at a minimum, to any NTSC broadcast television station that holds a construction permit or license. However, Entravision is concerned that limiting the protection to permittees and licensees will have a disruptive effect on full service stations, which remain the principal over-the-air broadcast service.

The suggested interpretation can have detrimental effects. As noted by the Commission, new NTSC full service applications are protected against other new full service applications, but are not protected against Class A stations. Likewise, unfilled allotments on the Commission’s television table of allotments would not be protected. This is not some theoretical possibility. At the present time, the Commission has an auction pending for an unfilled NTSC allotment on Channel 52 at Blanco, Texas. The successful party in that auction will, in all likelihood, pay a

substantial sum for the permit. However, the new permittee may well have its purchase affected by a Class A station. This should not be so.

Entravision submits that the Congress did not intend to disrupt the continued implementation of NTSC service. In fact, Section (f)(7)(A) speaks to the protection of the Grade B contour of analog stations. The protection should extend, in the case of any channel on the table of allotments or which is unbuilt, to a predicted maximum Grade B contour for that facility that the Commission should establish. In this way, the CBPA is not utilized to hinder the NTSC service that will be offered by new NTSC stations.

6. Protection of Future Operations on Analog Channels

The Commission is correct in noting at ¶ 34 of the NPRM that full service broadcasters have the right to revert to their NTSC allotment for DTV operation at the end of the DTV conversion period. In fact, this may well be mandatory if the DTV allotment is outside the DTV core spectrum. Since the NTSC station cannot presently maximize for DTV on the NTSC allotment, the failure to protect the NTSC station for DTV maximization may not be in accord with the statutory requirement.

Entravision urges the Commission to review the DTV table of allotments and to protect any party that holds an analog permit/license inside the DTV core spectrum and a DTV allotment outside the core spectrum. Thus, Class A licenses would not be protected against the replication of its NTSC signal by a permittee/licensee that applies to the Commission to use an in-core analog channel for DTV operation owing to the allotment of an out-of-core DTV channel.

7. Application of Section 337 of the Communications Act

Pursuant to the terms of Section 337 of the Communications Act, as adopted in the Balanced Budget Act of 1997, the Commission is required to “seek to assure” that a qualifying LPTV station which is operating in the Channel 60-69 band is assigned to a channel below Channel 60. Entravision is concerned that the Commission has not undertaken the necessary efforts to seek to assure the relocation of the Channel 60-69 LPTV stations and the instant rulemaking fails to evidence any further compliance with the Section 337 requirements.

As of the present time, the Commission's principal initiative has been to permit displacement applications for Channel 60-69 band stations. However, the mere ability to apply for displacement does not "assure" these stations of a channel position below Channel 60. Entravision continues to urge the Commission to adopt an active assurance policy. The Commission should actively assist each Channel 60-69 station in obtaining a new channel position, including the waiver of any rules that prevent such a move. In order to accomplish this result, the Commission should allow any Channel 60-69 band station that cannot itself locate another channel to file a request with the Commission and the Commission should then review its engineering database and advise the party that if it is willing to file an application for a designated channel within 30 days, that the Commission will grant such a change.

The Congress, in adopting the Balanced Budget Act, required that the Commission take affirmative action to protect the Channel 60-69 LPTV and translator stations owing to the Congressional decision to turn this spectrum over to non-broadcast users. The Commission has been directed to use its efforts to assure such a result. Until now this has not been done. It is time for the Commission to undertake the necessary effort to see to it that Channel 60-69 LPTV and translator stations are able to relocate and continue to serve the public.

8. Channel 52-59 Displacement

Entravision agrees that LPTV and translator stations on Channels 52 to 59 face displacement and should be able to commence the process of seeking spectrum in the DTV core. However, it is concerned that permitting such displacement at this time will overload the core and prevent the use of core channels by parties that face imminent displacement. Therefore, Entravision urges the Commission not to unleash a wave of further station moves until such time as Channel 52-59 stations are subject to near term displacement.¹ Further, when the

¹ Consistent with this, the Commission should continue to freeze new station applications so that new applicants receive a "head start" on the core spectrum. Alternatively, in order to protect the Channel 52-59 stations, any lifting of the freeze on new applications should only be to allow applications in the Channel 52-59 band.

displacements are permitted, the Commission should act, as it did with the Channel 60-69 band, and provide for a single commencement date for the filing of displacement applications.

9. Commencement Date for Class A Protections

Paragraph 24 of the NPRM requests comment on whether Class A protections should commence with the grant of a construction permit or a license to cover construction of an in-core station upon the assignment of an LPTV station to the core spectrum. NPRM, ¶ 24. Entravision submits that the protections conferred by the grant of a Class A license should commence at the earliest possible time: upon the conferral of a license to cover construction. The uncertainty inherent in the secondary regulatory status imposed upon LPTV stations should be removed from a qualifying station as soon as possible so as to enable the station to successfully undertake and complete construction. Maintenance of the station's secondary status only imposes an artificial and unnecessary hurdle to the successful construction of the in-core station. As such, Entravision submits that the protections conferred by the granting of a Class A license should commence upon the conferral of a license to cover construction of an in-core station.

10. Must-Carry Status

There is no mention of the must-carry status of Class A stations on cable television in the NPRM. Given the importance of cable television carriage, Entravision believes that this is a significant omission. The Commission should not conclude this rulemaking without resolving whether a Class A station is entitled to must-carry treatment and, if so, when the treatment commences.

Under present rules, all full service and qualified low power stations² are entitled to must-carry treatment on cable television systems. This has left the great bulk of LPTV stations without any entitlement to must-carry treatment on cable television. As a result, they have been unable to access the majority of homes that obtain their television service by cable television or open video systems.

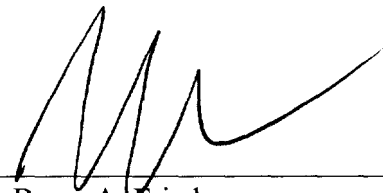
² See Section 76.55(d). There is a six-part test in order for an LPTV station to become a qualified low power station, which has limited such stations to small, rural communities.

While the argument could be made that operation of LPTV stations as a secondary service and without Part 73 responsibilities, the Class A service alters the analysis. As the Commission indicates in the NPRM, Class A stations will have to meet Part 73 requirements and may well be included under Part 73. NPRM at ¶ 20. In that the Class A stations are to be treated in the same manner as full-service stations, they should also receive the same must-carry entitlement. Consequently, Entravision requests that the Commission provide Class A stations with must-carry rights in connection with the rules adopted in this proceeding.

Respectfully submitted,

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